

**REMARKS/ARGUMENTS**

**Drawings**

Examiner has required that circumferences of twelve, nineteen point two and twenty-four inches must be shown on the drawings. Accordingly, Applicant has provided a annotated drawing sheet for reference, and a replacement drawing sheet for inclusion with the application. No new matter has been added; the circumferences are recited in the specification at page 11, lines 13-19 and page 24, lines 4-7.

**103(a) Rejections**

Examiner has rejected claims 1-14, 16-18, 20, 21 and 23 over Kelley (U.S. Pat. No. 2,495,974) in view of Canalle (U.S. Pat. No. 6,571,487)

Applicant respectfully submits that Examiner has misconstrued Kelley '974. **The claimed feature of Applicant's invention of a "truncated flat front wall" is *entirely absent from Kelley '974*.** The front wall of Kelley '974 ends in a point. It is not flat and cannot be placed proximate a wall surface that is perpendicular to the workpiece on which the wheel portion rides. Furthermore, none of the prior art discloses a truncated flat front wall. Accordingly, Applicant has amended claims 1, 7 and 12 to include the limitation of claim 3 and has cancelled claim 3.

Applicant has amended claim 23 to specifically claim that the truncated front wall is perpendicular to a workpiece surface when said wheel of said apparatus is disposed upon the workpiece, as is disclosed in FIGS 1-4.

Applicant's truncated flat front wall permits Applicant's tool to fit squarely between a first horizontal surface and a perpendicular disposed second surface, a feature that is

necessary for a squaring and framing layout tool. None of the prior-art shows a front component that is perpendicular to a horizontally disposed work piece.

Furthermore, Examiner's casting of the scale (ref. num. 45, col. 5, line 10) of Kelley '974 as Applicant's notches is a highly strained interpretation. There is nothing in Kelley '974 to suggest or imply that the scale (45) is anything other than indicia. Examiner further cites the same scale (45) as Applicant's length. Applicant respectfully points out that the scale cannot be both notches and a length.

Applicant further respectfully submits that Examiner has further misconstrued the centering notch (29) and marking point (88) of Canelle '487 as nail holes. Neither centering notch (29) or marking point (88) of Canelle '487 comprises a hole; they are nothing more than two dimensional V-shaped indentations. As such, neither could retain a nail, as Applicant's nail hole could.

Additionally, Applicant respectfully submits that Examiner has further misconstrued Canelle '487, citing the same centering notch (29) and marking point (88) as the string grooves of Applicant's invention. As can be seen from Applicant's figures, Applicant's string grooves are U-shaped channels having a further longitudinal dimension, contrary to the two dimensional centering notch (29) and marking point (88) of Canelle '487. The channel of Applicant's string grooves can retain a plumb line in a linear fashion, which Canelle '487 cannot.

Applicant respectfully submits that the invention of Kelley '974 requires two wheels in order to function. The description of Kelley '974 specifically cites how the wheels must work together and required an increase in the size of the housing to incorporate two wheels. The two wheels required by Kelley '974 prevent directional turning of the apparatus, while Applicant's single wheel permits such directional turning. Applicant's invention requires only one wheel and, accordingly, is a non-obvious improvement over Kelley '974.

Applicant further points out that the enlarged cutout of claims 19 and 22 distinguishes over the prior art, wherein the prior art lacks such large window cutout portions, and wherein the windows are suited for viewing incremental markings. The window cutout is disclosed in the specification at page 18, lines 11-20. Such window portions further permit an operator of Applicant's invention to control the movement by applying finger pressure to the wheel portion, thereby braking rotation, and further provides a support purchase point for holding Applicant's invention firmly against a workpiece surface.

Applicant has added new claim 24, directed to plumb line and roof pitch markings, supported in FIGS. 3, 4 and 9, and in the specification at page 18, lines 1-9.

### **CONCLUSION**

No new matter has been added. Amendments to claims 1, 7, 12 and 23, and new claim 24 are as to form only.

In light of the above arguments, new claims and the amendments to claims 1, 7, and 12, Applicant respectfully believes that Applicant has traversed Examiner's rejections.

For the reasons set forth above, and the amendments to claims 1, 7, 12 and 23, Applicant further respectfully believes that claims 1, 7 and 12, and all claims depending therefrom, are now in condition for allowance and that Examiner's rejection of claims depending therefrom is moot. If Examiner disagrees with Applicant's position and would like to receive further clarifying explanations of the significance of Applicant's invention, it is respectfully requested that Applicant be granted a telephonic, or in-person, interview with Examiner.

Otherwise, should the Examiner have any questions regarding this submission, he is invited to contact the undersigned counsel at the telephone number below.

{Signature follows on next page}

Brown, C. Allen

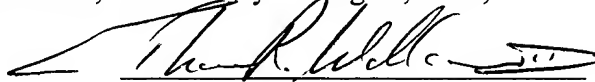
Appl. No. 10/761,701

Filed: January 21, 2004

Atty. Docket No. 23060-RA

Page 14 of 14

Respectfully submitted, this 26<sup>th</sup> day of August, 2005,

A handwritten signature in black ink, appearing to read "Thomas R. Williamson III", written over a horizontal line.

Thomas R. Williamson III, Esq.

Reg. No. 47,180

Email: [twilliamson@mkiplaw.com](mailto:twilliamson@mkiplaw.com)

MYERS & KAPLAN,  
INTELLECTUAL PROPERTY LAW, L.L.C.  
1899 Powers Ferry Road  
Suite 310  
Atlanta, GA 30339  
Phone: (770) 541-7444  
Fax: (770) 541-7448

